



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 06-61

May 11, 2012

Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Department on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Massachusetts.

ORDER ON CLARIFICATION AND PARTIAL RECONSIDERATION

APPEARANCES: Alexander Moore, Esq.
 Verizon New England, Inc. d/b/a Verizon Massachusetts
 185 Franklin Street, 13th Floor
 Boston, MA 02110-1585
FOR: VERIZON NEW ENGLAND, INC. D/B/A
 VERIZON MASSACHUSETTS
 Petitioner

Jonathan B. Engel, Esq.
Assistant Attorney General
Office of the Attorney General
Utilities Division
One Ashburton Place
Boston, MA 02108
Intervenor

Nancy J. Hertel, Esq.
AT&T Corp.
Floor 25D
225 W. Randolph St.
Chicago, IL 60606

David Mancuso
AT&T, Inc.
99 Bedford Street, Suite 420
Boston, MA 02111
FOR: AT&T COMMUNICATIONS OF NEW ENGLAND,
INC. AND SBC LONG DISTANCE, LLC D/B/A
AT&T LONG DISTANCE
Intervenor

Eric J. Branfman, Esq.
Philip J. Macres, Esq.
Bingham McCutchen LLP
3000 K Street NW, Suite 300
Washington, DC 20007-5116
FOR: BROADVIEW NETWORKS, INC; DSCI CORPORATION;
EUREKA TELECOM, INC. D/B/A INFOHIGHWAY
COMMUNICATIONS; NEW HORIZON COMMUNICATIONS;
METROPOLITAN TELECOMMUNICATIONS OF
MASSACHUSETTS, INC. A/K/A METTEL; AND
ONE COMMUNICATIONS
Intervenors

Robert J. Munnely, Jr., Esq.
Murtha Cullina LLP
99 High Street, 20th Floor
Boston, MA 02110
FOR: DSCI CORPORATION
Intervenor

Douglas S. Denny-Brown, Esq.
General Counsel/V.P. Regulatory Affairs
RNK, Inc. d/b/a RNK Telecom
333 Elm Street, Suite 310 Dedham, MA 02026
FOR: RNK, INC. D/B/A RNK TELECOM
Intervenor

William McCarthy
Global Optimal Communications
450 Main Street
Springfield, MA 01105
FOR: GLOBAL OPTIMAL COMMUNICATIONS
Limited Participant

I. INTRODUCTION

At issue before the Massachusetts Department of Telecommunications and Cable (“Department”)¹ is the method by which Verizon New England, Inc. d/b/a Verizon Massachusetts (“Verizon” or “Company”) should calculate certain “avoided indirect costs”² in reducing wholesale discounts for resold services. In a pair of motions, Verizon requested clarification and partial reconsideration of a previous Department previous order on information that needs to be included in the Company’s compliance filings in relation to its resale tariffs. Motion of Verizon Massachusetts for Clarification and Partial Reconsideration, D.T.E. 06-61 (filed Jan. 18, 2012) (“January 18 Motion”); Second Motion for Clarification, D.T.E. 06-61 (filed Feb. 21, 2012) (“February 21 Motion”). The Department agrees with Verizon that further clarification of the Department’s previous order is warranted, and therefore it allows Verizon’s motions, in part, as set forth below. The Company’s request that it be permitted to use another methodology in calculating “avoided indirect costs” in its “General Purpose Computer Expenses Account” is denied for the reasons discussed below.

In its January 18 and February 21 Motions, Verizon specifically asked the Department to confirm that the Company should: consider as avoided, those costs in its “Office Equipment Expenses Account” and “Human Resources Account” that are associated with the costs in the “Sales Account” (January 18 Motion at 5); and use unseparated costs in calculating the amounts in its “Office Equipment Expenses Account,” “Human Resources Account,” and “General and Administrative Account” that are deemed “avoided” on resale of its services to wholesalers (as

¹ This matter was initially brought before the Department of Telecommunications and Energy (“DTE”). Pursuant to Governor Deval Patrick’s Reorganization Plan, Chapter 19 of the Acts of 2007, the DTE ceased to exist, and the Department of Telecommunications and Cable was created, effective April 11, 2007. For the purpose of this Order, “Department” shall refer to both agencies.

² Throughout this case, “avoided indirect costs” and “avoided indirect expenses” have been used interchangeably by the parties. In this order, the Department hews to “avoided indirect costs.”

opposed to direct sales to consumers) (February 21 Motion at 3). Verizon has also asked for an alternate method by which it should calculate “avoided indirect costs” in its “General Purpose Computer Expenses Account” because the methodology selected by the Department requires data in a form that the Company claims is no longer kept. January 18 Motion at 5.

In this Order, the Department confirms that Verizon should consider as avoided those costs in the “Office Equipment Expenses Account” and “Human Resources Account” associated with the costs in the “Sales Account”; and use unseparated costs in calculating the amounts in its “Office Equipment Expenses Account,” “Human Resources Account,” and “General and Administrative Account” that are deemed “avoided” on resale to wholesalers. As for Verizon’s request that it be permitted to use another methodology in calculating “avoided indirect costs” in its “General Purpose Computer Expenses Account,” the Department denies Verizon’s request, and the Company is directed to comply with the Department’s order dated January 5, 2012. In the alternative, if it cannot comply with this directive, Verizon is directed to use the resale discount of 45.38% that has been applied to the Company in other adjudications, absent sufficient evidence supporting its claims that it is unable to comply with the Department’s earlier order. If Verizon demonstrates to the Department’s satisfaction that it cannot calculate the Company’s “avoided indirect costs” using the methodology prescribed, the Department will consider calculations using alternative methodologies to calculate such costs, provided Verizon includes sufficient data in its calculations for the Department to make an informed decision.

II. PROCEDURAL HISTORY

The motions before the Department relate to Verizon’s proposed revisions to its resale tariff filed on June 16, 2006 (“Tariff Revisions”). *Investigation by the Dep’t of Telecomms. & Energy on its own motion as to the propriety of the rates & charges set forth in the following*

tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61, Docket at 1 (June 16, 2007) ("Docket"). The Tariff Revisions included reductions in the wholesale discounts for resold services. *Id.* The Department issued its Order in this case on January 30, 2007. *Investigation by the Dept. of Telecomms. and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 14, filed with the Dep't on June 16, 2006, to become effective July 16, 2006, by Verizon New England, Inc. d/b/a Verizon Mass., D.T.E. 06-61, Order (Jan. 30, 2007) ("2007 Order").*

In the 2007 Order, the Department modified Verizon's proposed "avoided cost study" by:

1. Requiring the use of unseparated cost data (2007 Order at 33), including revenues for OS/DA in overall revenues (*Id.* at 37), rejecting the removal of any corresponding expenses to the nine miscellaneous revenue accounts that were removed from the avoided cost discount ratio (*Id.* at 38);
2. Using the wholesale/retail percentages in Verizon's 2005 ARMIS Report 43-03 for calculating the avoided costs in the "Customer Services and Billing Operations Systems Expenses Account" (*Id.* at 51); and
3. Avoiding 100 percent of expenses in the "Sales Expenses Account" (*Id.* at 60).

The Department directed Verizon to submit a compliance filing in light of the Department's modifications. 2007 Order at 71.

The avoided cost study adopted in the 2007 Order did not include any "avoided indirect costs." *Id.* at 60-71. The Department found that, under the "actually avoided" standard, "there can be, and in fact may be, indirect costs that Verizon avoids as a result of resale activity." *Id.* at 68. However, the Department concluded that the record did not contain sufficient evidence of "the existence or level, if any, of those expenses" to conclude that such costs exist in Massachusetts. (2007 Order at 70). The Department based its decision on *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 755-56 (8th Cir. 2000), *aff'd in part and rev'd in part on other grounds sub*

nom Verizon Commc'ns Inc. v. FCC, 535 U.S. 467 (2002) (“*Iowa*”), in denying the use of the cost-apportioning methodology proposed by the CLEC Coalition,³ and concluded that without the use of such methodology, there were no means of determining “avoided indirect costs” for the purposes of calculating the resale discount. 2007 Order at 71.

As discussed in greater detail in the Department’s January 5, 2012, Reconsideration Order (“Reconsideration Order”), the CLEC Coalition filed a Motion for Reconsideration on February 20, 2007 requesting that the Department reconsider its treatment of indirect costs in setting the wholesale discount in the 2007 Order:

The CLEC Coalition sets forth four arguments on reconsideration. First, it argues that under G. L. c. 159, § 20, Verizon was responsible for showing that there were no avoided indirect costs, and that Verizon failed to meet that burden. The CLEC Coalition also asserts that Verizon’s position was unlawful in that it permitted it to incur wasteful and imprudent expenditures. Thirdly, the CLEC Coalition argues that the Department erred in not finding substantial evidence in the record to find that indirect costs will be avoided. Lastly, the CLEC Coalition argues that the Department was mistaken in concluding that *Iowa* [] prohibited state commissions from using a cost-apportioning methodology to determine avoided indirect costs.

Reconsideration Order at 4-5 (internal citations omitted). Verizon filed its Response on March 7, 2007 and argued that:

the setting of wholesale rates is governed by federal law and that the burden placed on the carrier under G. L. c. 159, § 20, is not applicable in determining wholesale rates. Verizon further argues that the cited standard that evaluates waste and prudence is outdated and additionally not relevant to this matter. Verizon asserts that the Department was correct in determining that the record did not contain substantial evidence to justify a finding that indirect costs will be avoided, and that the argument that substantial evidence was present in the record is simply a rehashing of the CLEC Coalition’s earlier arguments. Lastly, Verizon concedes that the Department might have overstated the *Iowa* [] holding, but asserts that that determination was simply an alternate basis for the holding in the *Order*, and not necessary to uphold the original *Order*.

³ As was the case throughout this proceeding, the term “CLEC Coalition” refers collectively to Metropolitan Telecommunications of Massachusetts, Inc. d/b/a MetTel; One Communications; Broadview Networks, Inc.; DSCI Corp.; Eureka Telecom, Inc. d/b/a InfoHighway Communications; and New Horizon Communications.

Id. at 5 (internal citations omitted).

The Department granted the CLEC Coalition’s Motion for Reconsideration on January 5, 2012. In the Reconsideration Order, the Department determined that it had ignored record evidence of “avoided indirect costs” due to a mistaken interpretation of the *Iowa* decision. *Id.* at 18. Further, the Department found that Verizon had not shown that indirect costs are not avoided when determining the wholesale discount to be applied when Verizon sets its wholesale rate for resold services. *Id.* at 11. Verizon was directed by the Department to submit a compliance filing within 21 days of the Reconsideration Order. *Id.* at 19.

On January 18, 2012, Verizon sought clarification on the calculation of costs avoided in the “Office Equipment Expenses Account” and “Human Resources Account” and partial reconsideration on the Department’s decision regarding some portion of “General Purpose Computer Expenses” avoided on resale. January 18 Motion at 1.⁴

On January 27, 2012, the CLEC Coalition filed its Response to Verizon’s January 18 Motion (“CLEC Coalition Response”).⁵ The CLEC Coalition opposed Verizon’s motion, asserting that the Department had insufficient legal support to justify reconsideration. CLEC Coalition Response at 3. The CLEC Coalition proposes that the Department adopt the surrogate percentage of 45.38% used in determining the resale discount in *In re Petition of WorldCom, Inc.* pursuant to section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of

⁴ Verizon also filed a Motion to Extend Compliance Period and a Motion to Extend Judicial Appeal Period. On January 24, 2012, the Department issued a Procedural Order that set a schedule for briefing on Verizon’s motions and extended the time for Verizon to submit the filing at issue in the Compliance Motion for 30 days, until February 27, 2012, to permit the Department time to address the substance of Verizon’s motions. The Department allowed Verizon’s Motion for Extension of the Appeal Period and Motion to Extend the Compliance Period on February 27, 2012. In that Order, the Department directed Verizon to submit its calculation of the avoided costs discount rates and refunds in accordance with the Reconsideration Order on or before July 24, 2012.

⁵ The CLEC Coalition also filed oppositions to the Appeal Motion and the Compliance Motion on January 27, 2012. Verizon filed replies to these oppositions, together with a motion for leave to file the replies, on February 7, 2012. The Department allowed Verizon’s Motion for Extension of the Appeal Period and Motion to Extend the Compliance Period on February 27, 2012.

the Virginia State Corp., Commission regarding Interconnection Disputes with Verizon Va. Inc. & for Expedited Arbitration, 18 F.C.C.R. 17722, Memorandum Opinion & Order (Aug. 29 2003) (“Virginia Order”) and *In re Implementation of the D.C. Telecommunications Competition Act of 1996*, Case No. 962, Order no. 12610, Opinion & Order (Dec. 6, 2002) (“D.C. Order”). CLEC Coalition Response at 4-5.

On February 17, 2012, Verizon filed a reply to the CLEC Coalition Response (“Verizon Reply”). Verizon argued in its Reply that the CLEC Coalition failed to provide evidence that a specific percentage of costs were avoided in Massachusetts in 2005. Verizon Reply at 1. Verizon also proposed a methodology for calculating the avoided costs for the “General Purpose Computer Expenses Account.” *Id.* at 1, n.3.

On February 21, 2012, Verizon filed a second Motion for Clarification seeking Department confirmation that the Company should use unseparated costs in calculating the amounts for the “Office Equipment Expenses Account,” “Human Resources Account,” and “General and Administrative Account” (“February 21 Motion”). February 21 Motion at 1. The CLEC Coalition did not respond to the February 21 Motion.

On February 23, 2012, the CLEC Coalition filed an Opposition to Verizon’s Motion for Leave to Reply that included a surreply (“CLEC Coalition Surreply”). In its Surreply, the CLEC Coalition opposed Verizon’s alternative methodology claiming it has no basis in the record and reiterated its arguments for the application of a 45.38% avoided cost adjustment to the “General Purpose Computer Expenses Account” or, in the alternative, to consider an alternative avoided cost factor. CLEC Coalition Surreply at 2-3, n.4. The CLEC Coalition describes this alternative avoided cost factor as based on the relationship of the “General Purpose Computer Expenses Account” avoided cost factor in the Verizon Virginia cost study to the direct costs avoided cost

factor contained therein, and offered to provide additional details if requested. CLEC Coalition Surreply at 3, n.4.

III. ANALYSIS AND FINDINGS

A. Verizon's Reply and the CLEC Coalition's Surreply Are Accepted for Filing.

As an initial matter, the Department grants leave for Verizon to reply and the CLEC Coalition to surreply and accepts the Verizon Reply and the CLEC Coalition Surreply into the record. The Department recognizes this proceeding has a long history and notes that the arguments must eventually end. The Department believes that the information within the Verizon Reply may provide additional insight, and it is not convinced by the CLEC's Coalition argument that the Verizon Reply should not be considered because the procedural schedule did not explicitly designate a time for Verizon to file a reply. The Department's procedural regulations, 220 C.M.R. 1.06(6), allows a party to seek leave to file a motion, and it is within the Department's discretion whether to accept such motions. *See* 200 C.M.R. 1.06 (6). Further, as the Department is also accepting the CLEC Coalition Surreply, the CLEC Coalition's concern over Verizon having "the last word" is moot.

B. Verizon's Requests for Clarification in its January 18 Motion and February 21 Motion.

Both the January 18 Motion and February 21 Motion are styled by Verizon as motions for clarification. The Department may clarify a previously issued order if it is silent as to the disposition of a specific issue requiring determination in the order, or if the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. *Berkshire Gas Co.*, D.P.U. 92-210-B at 3 (1993), citing *Whitinsville Water Co.*, D.P.U. 89-67-A at 1-2 (1989). The Department may also clarify some aspect of an order that may be unclear or confusing. *Boston Edison Co.*, D.P.U. 91-233-D-1 at 2 (1994), citing *Fitchburg Gas & Elec. Light Co.*, D.P.U.

19296/19297, at 2 (1976). The Department does not reexamine the record for the purpose of substantively modifying a decision. *Boston Edison Co.*, D.P.U. 91-233-D-1 at 2. The party requesting clarification has the burden to demonstrate that an order is silent as to the disposition of a specific issue, or contains sufficiently ambiguous language. *W. Mass. Elec.*, D.T.E. 03-82-A, at 3.

1. January 18 Motion: Costs in the “Office Equipment Expenses Account” and the “Human Resources Account” associated with the costs in the “Sales Account” are to be considered avoided.

The Department agrees that the Reconsideration Order is ambiguous regarding one particular calculation, and it now clarifies that Verizon is to consider as avoided, those costs in the “Office Equipment Expenses Account” and the “Human Resources Account” that are associated with the costs in the “Sales Account.” The Reconsideration Order directed Verizon to calculate avoided costs in the “Office Equipment Expenses Account” and the “Human Resources Account” using the methodology created in the Virginia and D.C. Orders. Reconsideration Order at 17. Verizon states that the Reconsideration Order is ambiguous regarding the calculation and seeks clarification for calculating the indirect costs it avoided in the “Office Equipment Expenses Account” and the “Human Resources Account.” January 18 Motion at 1-2. Verizon believes that the Department wanted the Company to remove “the percentage of the expenses that is associated with Account 6612 (Sales), and not by applying the ratio of avoided direct expenses to total direct expenses.” *Id.* at 2. The CLEC Coalition did not oppose this request for clarification. CLEC Coalition Response at 2.

In the Reconsideration Order, the Department adopted the methodology utilized in the Virginia and D.C. Orders and directed Verizon to calculate the avoided indirect costs consistent with that methodology. Reconsideration Order at 17. The Department also found “that indirect

expenses in Account 612300 (Office Equipment Expenses), Account 672300 (Human Resources), and Account 672800 (General and Administrative) vary directly with the number of employees and thus are avoided in the ratio of avoided intrastate direct expenses to total company intrastate direct expenses.” Reconsideration Order at 17. Verizon asserts that the language is ambiguous because the Virginia and D.C. Orders do not apply the ratio of avoided direct costs to total company direct costs for the “Office Equipment Expenses Account” and the “Human Resources Account.” January 18 Motion at 2. Rather, Verizon was directed to “remove[e] the appropriate percentage of expenses from accounts 6123 and 6723 that are associated with expenses in account 6612 [Sales].” January 18 Motion at 2.

In order to utilize the methodology and perform the calculations consistent with the Virginia and D.C. Orders, Verizon would need to calculate the avoided costs for the “Office Equipment Expenses Account” and “Human Resources Account” by removing the appropriate percentage of costs from those accounts that are associated with costs in the Sales Account. Virginia Order at 28. However, performing the calculation in this manner would be inconsistent with another Department finding in the Reconsideration Order “that indirect expenses in Account 612300 (Office Equipment Expenses), Account 672300 (Human Resources), and Account 672800 (General and Administrative) vary directly with the number of employees and thus are avoided in the ratio of avoided intrastate direct expenses to total company intrastate direct expenses.” Reconsideration Order at 17. The inconsistency between the Department finding and its directive creates ambiguity as to the calculation Verizon should perform. Therefore, the Department clarifies that Verizon should calculate the indirect costs it avoided in the “Office Equipment Expenses Account” and the “Human Resources Account” as described in the January 18 Motion.

2. *February 21 Motion: Verizon should use unseparated costs in calculating the avoided costs in the “Office Equipment Expenses Account,” the “Human Resources Account,” and the “General and Administrative Account.”*
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The Department confirms that Verizon, as stated in the Company’s February 21 Motion, “should use unseparated expenses in calculating the amounts in Accounts 612300, 672300 and 672800 that are deemed avoided on resale.” February 21 Motion at 3. Verizon requests this clarification because the Department found “that indirect expenses in Account 612300 (Office Equipment Expense), Account 672300 (Human Resources), and Account 672800 (General and Administrative) vary directly with the number of employees and thus are avoided in the ratio of avoided intrastate direct expenses to total company intrastate direct expenses.” Reconsideration Order at 17. Verizon suggests “using intrastate expenses as the basis for determining the avoided costs in Accounts 612300, 672300 and 672800 would be inconsistent with the 2007 Order and the way in which all other avoided costs are calculated in this proceeding.” February 21 Motion at 2.

The Department agrees that after significant analysis in the 2007 Order, the Department rejected Verizon’s approach “to limit the avoided costs used to calculate the resale discount to those avoided costs allocated, in accordance with the FCC’s jurisdictional separations rules, to intrastate only.” 2007 Order at 29. The use of separated or unseparated costs was not before the Department on reconsideration and the Reconsideration Order did not alter the prior finding of the Department. Reconsideration Order at 2. Verizon did not articulate whether it needed clarification because of silence or ambiguity in the Reconsideration Order but, upon review, the Department acknowledges that its use of “intrastate” could be unclear or confusing. Accordingly, the Department confirms that Verizon should use unseparated costs in calculating

the avoided costs in the “Office Equipment Expenses Account,” the “Human Resources Account,” and the “General and Administrative Account.”

C. Verizon’s Motion for Partial Reconsideration

Verizon’s January 18 Motion also purports to be a motion for “partial reconsideration.” Under the Department’s procedural rules, a party may file a motion for reconsideration within 20 days after the issuance of a final order. 220 C.M.R. § 1.11(10). Previously decided issues are reconsidered only under extraordinary circumstances requiring that the Department take a fresh look at the record. *Fitchburg Gas & Elec. Light Co.*, D.T.E. 98-51-A, at 5-6 (1999) (“*Fitchburg*”); *W. Mass. Elec. Co.*, D.T.E. 00-110-C, at 9 (2001); *North Attleboro Gas Co.*, D.P.U. 94-130-B, at 2 (1995); *Commw. Elec. Co.*, D.P.U. 92-3C-1A, at 3-6 (1995); *Boston Edison Co.*, D.P.U. 90-270-A, at 3 (1991). The burden to demonstrate such extraordinary circumstances is on the party requesting reconsideration. *Verizon New England Inc.*, D.T.E. 04-33-A, at 17 (Dec 16, 2005); *Verizon New England Inc.*, D.T.E. 01-20, at 14 (Sept. 24, 2002); *Berkshire Gas Co.*, D.T.E. 01-56-A, at 7-8 (May 8, 2002); *Sprint Commc’ns Co. L.P.*, D.T.E. 00-54-A, at 14- 30, (May 3, 2001). Extraordinary circumstances warranting reconsideration may exist when: (i) “previously unknown or undisclosed facts that would have significant impact upon the decision already rendered” are newly brought to light (*Boston Edison Co.*, D.P.U. 90-270-A at 2-3); or (ii) an issue was wrongly decided due to the Department’s mistake or inadvertence (*Mass. Elec. Co.*, D.P.U. 90-261-B, at 7 (1991); *New England Tel. & Tel. Co.*, D.P.U. 86-33-J, at 2 (1989)).

Verizon requests that the Department reconsider its directive that the Company calculate the avoided costs for the “General Purpose Computer Expenses Account” following the same methodology in the Virginia Arbitration. January 18 Motion at 3. The basis for Verizon’s

request is that it “does not have the information necessary to calculate the proportion of expenses the Department found is avoided in ‘General Purpose Computer Expenses Account’ using the methodology that was applied in the Virginia Arbitration.” *Id.* Verizon explains that it changed accounting systems between 2000 and 2001, altering the function codes for the “General Purpose Computer Expenses Account” tracking costs by equipment type rather than the business function supported. *Id.* at 2; Affidavit of Joseph S. Williams at 2-3.

According to the CLEC Coalition, Verizon’s inability to identify the avoided costs in the “General Purpose Computer Expenses Account” due to changes in the Company’s accounting system does not excuse Verizon’s obligation to reflect avoided costs. CLEC Coalition Response at 3. The CLEC Coalition proposes that if Verizon lacks the data to calculate the avoided costs, it should instead apply a proxy of 45.38% to the “General Purpose Computer Expenses Account.” *Id.* at 4. The CLEC Coalition states that under these circumstances the Department has authority to adopt the 45.38% proxy and that the percentage is reasonable and supported by substantial evidence. *Id.* at 4-5. Specifically, the CLEC Coalition notes that that the percentage was derived using the methodology from the Virginia and D.C. Orders for the “General Purpose Computer Expenses Account.” *Id.* at 4.

Verizon asserts that the record does not support the use of the 45.38% proxy figure proposed by CLEC Coalition. Verizon Reply at 2. According to Verizon, “the 45.38% [proxy] was an average result from six states and was based on 1999 data,” which is in contrast to the 2005 Massachusetts-only data used in the proceeding. *Id.* at 2. Verizon states that if the Department adopts the use of the proxy, it is “more reasonable to infer that Verizon MA would avoid the general expenses of maintaining and operating its computer systems in the same ratio that it avoids direct expenses generally on resale.” Verizon Reply at 2, n.3. Verizon proposes

this ratio for what can only be described as convenience, claiming the ratio “does not depend on assumptions regarding data from other states and other era but can be directly calculated from data included in Verizon MA’s Compliance Study.” Verizon Reply at 2, n.3.

The CLEC Coalition argues that Verizon has not carried its burden to demonstrate that the 45.38% proxy should not be used. CLEC Coalition Surreply at 1. Moreover, the CLEC Coalition states that the use of such a proxy is reasonable, arguing that Massachusetts-specific avoided costs from its 2001 cost studies would have resulted in similar avoided cost factors for services with and without operator services. *Id.* at 2. The CLEC Coalition believes that Verizon’s alternative methodology should be rejected because the result of a 15.95% avoided cost factor has no basis in the record. *Id.* at 3, n.4. The CLEC Coalition proposes that in the alternative, the Department should consider an avoided cost factor based on the relationship of the “General Purpose Computer Expenses Account” avoided cost factor in the Virginia Arbitration cost study to the direct costs avoided cost factor contained therein. *Id.*

Notably, Verizon does not articulate why it should be granted reconsideration. Instead, Verizon states only that it does not have the information necessary to calculate the portion of costs the Department found avoided because it does not track the information in the same manner as it tracked the information in 1999. January 18 Motion at 3. The record in this case reveals no instance in which Verizon disclosed a change to its cost accounting system which would prevent it from calculating the avoided costs for the “General Purpose Computer Expenses Account” as it did in the Virginia Arbitration methodology. Verizon also has not made an attempt to explain why it could not isolate the data which it once had tracked separately. The Department observed that “the record in this docket does not contain an analysis on what portion of these costs will be avoided.” Reconsideration Order at 17. Simply stated, the Department’s

treatment of this issue is not in error or inadvertence. As the record is devoid of any analysis by Verizon on avoided costs for the “General Purpose Computer Expenses Account,” despite specific Information Requests by the Department to the Company.⁶

Verizon had numerous opportunities during the proceeding to disclose the inability to perform a calculation for the “General Purpose Computer Expenses Account based on the Virginia Arbitration” methodology. Brief of Verizon Mass. filed Nov. 22, 2006, at 21-25, Reply Brief of Verizon Mass. filed Dec. 6, 2006, at 15-18; Response of Verizon Mass. filed Mar. 7, 2007 to CLEC Coalition Motion for Reconsideration at 8-9. Rather, Verizon remained steadfast in its argument that indirect costs are not avoided. Brief of Verizon Mass. filed Nov. 22, 2006, at 21-25, Reply Brief of Verizon Mass. filed Dec. 6, 2006, at 15-18; Response of Verizon Mass. filed Mar. 7, 2007 to CLEC Coalition Motion for Reconsideration at 8-9; Verizon Mass. Response to D.T.E. Fourth Set of Information Requests, DTE-VZ-4-2. Further, while not identifying the “General Purpose Computer Expenses Account,” the record contains a general assertion from Verizon that changes to its financial system has affected the usability of certain function codes. Verizon’s Response to CLEC Coalition’s Fourth Set of Data Requests, CLEC 4-3 (“Job Function Codes are not always appropriate to conduct our special studies as they have changed over time due to new financial system upgrades, merging with GTE companies (whose systems have no similar code), streamlining of the expense reporting process, and regionalization of many functions and centers into national operations.”).

When considering the impact of an undisclosed fact, the Department considers whether disclosure of the fact could have occurred before issuance of the final order. *See, e.g., W. Mass. Elec. Co., D.P.U. 86-280-A*. The Department has denied reconsideration when it rests upon

⁶ *E.g.,* DTE-VZ-4-2 requesting whether there is some easily determinable method of identifying avoided indirect costs from not avoided indirect costs assuming that indirect costs can be avoided and vary with the level of retail output.

information that could have been provided during the course of the proceeding and before issuance of a final order. *See, e.g., Boston Gas Co.*, D.P.U. 96-50-C (Phase I) at 36-37 (1997); *Boston Gas Co.*, D.P.U. 96-50-B (Phase I) at 8 (1997). The Department may deny reconsideration when the request rests on a new issue or updated information presented for the first time in the motion for reconsideration. *See, e.g., W. Mass. Elec. Co.*, D.P.U. 85-270-C at 18-20 (1987). To do otherwise is inconsistent with the principle that the parties should be made aware of, and respond to, potential issues as early as possible. *W. Mass. Elec. Co.*, D.P.U. 86-280-A (1987).

Verizon asserts that when it calculated in the Virginia Arbitration, the “General Purpose Computer Expenses Account” tracked costs through function codes showing the costs incurred in performing each of 36 business functions or activities. By 2005, Verizon’s cost accounting system tracked costs based on equipment type under the following function codes:

- Executive Department – Transfers Between Regulatory Jurisdictions Within A Multistate Company
- Cost Transfer – General Purpose Computer Expenses
- Computer Equipment Associated with Central Offices
- Computer Equipment Mainframe
- OCE Data Equipment and Servers
- Computer Equipment PC and mini

Verizon seems to suggest that it is incapable of following the methodology adopted in the Reconsideration Order⁷ because the function codes in the “General Purpose Computer Expenses Account” no longer track costs by direct accounts that allowed Verizon to avoid the same percentage of costs avoided in the related direct expense account. Affidavit of Joseph S. Williams at 2. Verizon, however, does not explain whether or with what degree of difficulty it

⁷ *See* Reconsideration Order at 17, ((1) Each function code in the indirect expense account is analyzed to determine if it directly supports an avoided direct function; (2) Indirect expenses are classified as fixed or variable relative to the level of retail output; and (3) For expenses that vary with the retail output level, each function code is analyzed to determine the portion that is avoided).

could establish sub-accounts for the “General Purpose Computer Expenses Account” thus allowing Verizon to perform the calculation in accordance with the methodology requested in the Reconsideration Order. Further, as part of the record, Verizon included a listing of its General Ledger by sub-account for revenue and costs. *See Verizon’s Responses to CLEC Coalition’s First Set of Data Requests: Attachment II.* Under the General Ledger, Verizon lists the following sub-accounts for the “General Purpose Computer Expenses Account”:

- 61240000 General Purpose Computer Exp-C
- 61241000 Genl Purp Computer Exp-ICC-C
- 61241100 Genl Purp Comp-Cust Billing
- 61241300 Genl Purp Comp-Emp Recrds Oth
- 61241400 Genl Purp Comp-Genl Inventory
- 61241500 Genl Purp Comp-Trouble Anlys
- 61241600 Genl Purp Comp-Service Order
- 61241700 Gen Purp Comp-Regulated
- 61241800 Genl Purp Comp-Accounting
- 61241900 Genl Purp Comp-Common
- 61247000 NR Genl Purp Computer Eq

See Verizon’s Responses to CLEC Coalition’s First Set of Data Requests: Attachment II.

While these sub-accounts are from Verizon’s balance sheet rather than its cost accounting system, their existence raises questions as to whether Verizon is truly incapable of complying with the methodology adopted in the Reconsideration Order. Additionally, Verizon explained that “any sub-account detail (below the FCC’s 4-digit accounting requirement) is for Verizon managerial purposes only, and dictated by what the managerial force wants to monitor in each of the main functional accounts.” *See Verizon’s Responses to CLEC Coalition’s First Set of Data Requests: CLEC Coalition 1-1 through 1-11, and 1-17 through 1-23, CLEC 1-10.* This suggests Verizon can establish function codes for the “General Purpose Computer Expenses Account.” As such, the Department directs Verizon to provide additional information clarifying and detailing its capability to comply with the methodology adopted in the Reconsideration Order.

If the unavailability of the requested data prevents the Department from make any finding of the actual avoided costs for the “General Purpose Computer Expenses Account,” the Department must employ another method for determining avoided costs. *See Petition of Verizon New England, Inc., MCI metro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter 159, Section 14 of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, Final Order, at 20-21 (June 22, 2009) (“*ILEC Rate Cap*”). It is well-established that the Department may use previously approved rates as a proxy where similar services are being offered. *Id.* at 21-22; *Investigation by the Dep’t on the Application of Intn’l Telecharge, Inc. under the Provisions of c. 159 of the G.L., as Amended, for a Certificate of Public Convenience & Necessity to Operate as a Resale, Value-Added or Interexchange Common Carrier within the Commw. of Mass.*, D.P.U. 87-72/88-72, Order, at 16-17 (Oct. 11, 1988) (requiring alternative operator service providers to either justify their rates based on their own cost or on the rates of AT&T or NET as those rates had previously been found to be just and reasonable); *Investigation by the Dep’t of Pub. Utils. on Its Own Motion Regarding (1) Implementation of § 276 of the Telecomms. Act of 1996 Relative to Public Interest Payphones (2) Entry & Exit Barriers for the Payphone Marketplace, (3) New England Tel. & Tel. Co.’s Public Access Smart-Pay Line Serv. & (4) the Rate Policy for Operator Servs. Providers*, D.P.U./D.T.E. 97-88/97-18 Phase II, Order, 9 (Apr. 17, 1998) (Department capped other inmate calling services providers’ rates at those of Bell Atlantic, which were previously determined reasonable); *In re Sprint Commc’ns Co. L.P., Pursuant to § 252(b) of the Telecomms. Act of 1996, for Arbitration of an Interconnection Agreement between Sprint & Verizon New England, Inc.*, D.T.E. 00-54-A, Order on Motion for Reconsideration, 21-22 (May 3, 2001) (ruling

that when the Department assesses the reasonableness of rates “CLEC [wholesale interconnection] rates must either be agreed-to through negotiation, be cost-justified, or CLECs may use Verizon’s rates as a proxy”). Although in this instance, the Department is making determinations regarding certain avoided costs rather than wholesale rates, the analysis is applicable and reasonable here. Indeed, in *ILEC Rate Cap*, the Department used Verizon’s wholesale rate to determine the reasonableness of another carrier’s rates, here, the Department is using Verizon’s avoided costs in the Virginia and D.C. Orders as a reasonable proxy for Verizon’s avoided costs in Massachusetts. *See ILEC Rate Cap*, D.T.C. 07-9, Final Order, at 21-23. That is, the application of a proxy of 45.38% avoided cost adjustment proxy to the “General Purpose Computer Expenses Account.”

If Verizon establishes to the Department’s satisfaction that it is incapable of complying with the methodology adopted in the Reconsideration Order, the Department may consider an alternative methodology for calculating the avoided costs in the “General Purpose Computer Expenses Account” in lieu of the proxy of 45.38%. If Verizon chooses to propose an alternative methodology, the Company is directed to include its calculations in sufficient detail for the Department to make an informed decision. As guidance for Verizon, the Department offers Verizon four alternatives for calculating avoided costs discussed below.

Proposal 1

To calculate the costs avoided in the “General Purpose Computer Expenses Account” infer that Verizon would avoid the general costs of maintaining and operating its computer systems in the same ratio that it avoids the direct costs generally on resale. Verizon Reply at 2, n.3.

Proposal 2

To calculate the costs avoided in the “General Purpose Computer Expenses Account” adopt a 45.38% avoided cost adjustment percentage as used in the Virginia Arbitration and D.C. Order. CLEC Coalition Response at 2. For this proposal, Verizon should also address the extent of the record evidence available to adopt this proposal and the extent of the record evidence establishing that the percentage of avoided costs for the “General Purpose Computer Expenses Account” had changed between 1999 and 2005.

Proposal 3

To calculate the costs avoided in the “General Purpose Computer Expenses Account” adopt an alternative avoided cost factor based on the relationship of the General Purpose “Computer Expenses Account” avoided cost factor in the Virginia Arbitration cost study to the direct costs avoided cost factor in the same cost study. CLEC Coalition Surreply at 3.

Proposal 4

To calculate the costs avoided in the “General Purpose Computer Expenses Account” adopt a proxy or other ratio developed after conducting a special study to identify those costs that are avoided from those costs in the same indirect cost category that are not avoided, by assigning all costs at the most basic level in each indirect cost category to either retail or wholesale depending on whether the function underlying the cost supports retail services or wholesale services. *See* Fourth Set of Information Requests issued by the D.T.E. to Verizon, DTE-VZ-4-2.

IV. ORDER

Accordingly, after consideration, it is

ORDERED: That the Motion for Leave to File a Reply submitted by Verizon on February 17, 2012 is GRANTED and the Verizon Reply and the CLEC Coalition Surreply

submitted by the CLEC Coalition without Leave on February 23, 2012 are accepted into the record; and it is

FURTHER ORDERED: That the Motion for Clarification and Partial Reconsideration submitted by Verizon on January 18, 2012 is GRANTED as to the request for clarification and DENIED as to partial reconsideration; and it is

FURTHER ORDERED: That the Second Motion for Clarification submitted by Verizon on February 21, 2012 is GRANTED; and it is

FURTHER ORDERED: That Verizon provide additional information clarifying and detailing its capability to comply with the methodology adopted in the Reconsideration Order as detailed herein; and it is

FURTHER ORDERED: That Verizon shall apply a 45.38% avoided cost adjustment to the “General Purpose Computer Expenses Account,” if it does not provide evidence of actual avoided costs; and it is

FURTHER ORDERED: That Verizon is permitted to provide additional avoided cost information in the form of a brief on the four proposals detailed herein; and it is

FURTHER ORDERED: That such additional information detailing its ability to comply and the aforementioned briefs shall be submitted to the Department within 30 days of the issuance of this Order; and it is

FURTHER ORDERED: That Verizon shall comply with all other directives contained herein.

By Order of the Department:

/s/ Geoffrey G. Why
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable federal and state laws.